THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NOS.9700, 12077 AND 16576 OF 2004

COMMON JUDGMENT DISPOSED OF ON 25-04-2006.

W.P.NO.9700 OF 2004

BETWEEN:

MOHD.AMJAD ALI AND OTHERS .. PETITIONERS

AND

JOINT COLLECTOR, R.R. DISTRICT

AND OTHERS .. RESPONDETNS

W.P.No.12077 of 2004

BETWEEN:

AZIZ MIRZA .. PETITIONER

AND

THE DISTRICT COLLECTOR, R.R.DIST.

HYDERABAD AND OTHERS .. RESPONDENTS

W.P.16576 OF 2004

BETWEEN:

J.SRINIVAS REDDY AND ANOTHER .. PETITIONERS

AND

JOINT COLLECTOR, R.R. DISTRICT

AND OTHERS .. RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NOS.9700, 12077 AND 16576 OF 2004

COMMON ORDER:

1. The issue involved in these three writ petitions is common and identical and therefore they were heard together and are being disposed of by this common order.

2. The order dated 5.6.2004 passed by the Joint Collector, Rangareddy District on a Revision Petition filed under section 9 of A.P.Rights in Land and Pattedar Pass Books Act, 1971 (for short the Act) is under challenge in these three writ petitions.

3. W.P.No.9700 of 2004 is filed by Mohd.Amjad Ali, Syed Ahmed Ali and Mohd.Jaweed Siddique with a prayer to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of Joint Collector, R.R. District in treating the land in S.No.13 of Dasarlapalli village of Kandukur Mandal as Kharij Kahta by quashing the validation made in favour of the petitioners in file No.B/2123/91, dated 28.12.1993 in Revision Case No.D5/7410/ 2003, dated 5.6.2004. Aziz Mirza came on record as party respondent in the writ

petition as per orders dated 15.11.2005 passed in WPMP.No.2335 of 2005.

4. W.P.No.12077 of 2004 is filed by Aziz Mirza with a prayer to issue an appropriate order or direction more particularly in the nature of writ of mandamus declaring the inaction of the District Collector and the Mandal Revenue Officer in not complying the orders passed in Revision Case No.D5/7410/2003 as bad in law and consequently direct them to register the land in S.No.13 of Dasarlapally village, Kandukur Mandal, R.R. District in his favour. Subsequently, the petitioner filed WPMP.No.23080 of 2005 to bring on record Md.Amjad Ali, Syed Ahmed Ali and Mohd.Jaweed Siddique as party respondents in the writ petition. The said WPMP came to be allowed on 15.11.2005 permitting the petitioner to bring on record the proposed parties as R-3 to R-5 in the writ petition. Yet another petition WPMP.No.5623 of 2006 has been filed by the petitioner seeking permission to add para 5-A and 9-A in the affidavit filed in support of the writ petition. The proposed amendment by way of adding para 5-A and 9-A read as follows:

> "Proposed para 5-A :
>
> The order of the learned Joint Collector proceeds on a premise wholly extraneous to the issue involved before him. The conclusions of the Joint Collector that the land is 'Kharij Khata' land is based upon a Xerox copy of alleged file, for which neither there was any verification nor any opportunity to any of the parties including the landlords to make any submissions regarding genuineness of the said claim. It is in- comprehensible that any Pattedar would relinquish any land in favour of the Government to allow it to be Kharij Khata land. The said conclusion of the Joint Collector is therefore, opposed to basic principles of natural justice, improbable and wholly arbitrary and ultra vires the powers of the Joint Collector under Sec.9 of the Act."
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> " Proposed para 9-A:
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> The Honourable Court may be pleased to declare the impugned order of the Joint Collector in File No.D5/7410/03 dated 5.6.2004 in the capacity as Collector under section 9 of the Act, is wholly illegal, arbitrary, ultra vires the powers under Section 9 of the Act."

By way of the proposed amendment, the petitioner is virtually questioning the order passed by the Joint Collector whereas his virgin prayer was for issue of mandamus to the authorities to implement the order of the Joint Collector passed in Revision Petition No.D5/7410/2003. Though the relief sought for by way of amendment is contradictory to the virgin relief, I am inclined to permit the petitioner to amend the pleadings since the order passed by the Joint collector on a revision is under challenge in two other writ petitions and as I proposed to pass common order in these three writ petitions. Accordingly, WPMP.No.5623 of 2004 is allowed.

5. W.P.No.16576 of 2004 is filed by J.Srinivas Reddy and J.Kista Reddy with a prayer to issue a writ of certiorari quashing the order dated 5.6.2004 of the Joint Collector, R.R. District passed in Revision Case No.D5/7410/2003. He impleaded the Joint Collector, R.R. District, Revenue Divisional Officer (East) Division, Mandal Revenue Officer, Kandukur Mandal; Syed Ahmed, Mohd. Zawed Siddiqui, M.A. Ali and Aziz Mirdha. At this juncture itself it is trite to note R-4 to R-6 herein are the writ petitioners in W.P.No.9700 of 2004 and R7 is writ petitioner in W.P.No.12077 of 2004.

6. A plain reading of the reliefs sought for in the writ petitions indicate that the challenge is to the order of the Joint Collector, R.R. District on a Revision Petition under section 9 of the Act.

7. Background facts of the case:

One Kista Reddy was the pattedar of the land bearing S.No.13 of Dasarlapalli village, Kandukur Mandal, R.R. District admeasuring Ac.57.12 guntas. He died in the year 1954 leaving behind his two sons namely J.Venkat Reddy and J.Narsimha Reddy. The two brothers along with their sons filed declarations under the

provisions of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and Rules made thereunder called A.P.Land Reforms (Ceiling on Agricultural Holdings), Rules, 1974. They contended before the Land Reforms Tribunal that rights over S.No.13 admeasuring Ac.15-12 guntas were relinquished by their father J.Kista Reddy and therefore the said lands were liable to be excluded from their holding. The Land Reforms Tribunal passed a common order in C.C.Nos.909, 910, 911, 912, 913, 1917, 1908, 1907, 1915, 1909/I/75, whereby and whereunder the Tribunal accepted the contention of the declarants and ordered for deletion of S.No.13 from their holding. I deem it appropriate to refer the relevant portion of the order passed by the Land Reforms Tribunal on 15.2.1977 and it is thus:

" The ancestor of these two brothers was one Kista Reddy, who died in the year 1954. One year before his death a registered partition deed was effected in 19523 by which the entire property was divided among the sons of Kista Reddy. Accordingly, Narsimha Reddy and Venkat Reddy got 291.04 and 291.04 respectively. But according to the present khata they are holding lands as follows:

Sri.J.Narsimha Reddy

Khata of Narsimha Reddy 119.31=1/9698 Dasarappli only

Ranga Reddy (son) 152.89=2.6938 - do – Kalvakurti

Venkatram Reddy(son) 93.91=1.6414 - do – Only

11. **6.3250**

This is agreed to by the verifying officer also as declared in his verification report. However, the counsel for the declarant argued that S.No.13 measuring 57.12 guntas of Dasarapalli is Karijkhata land and through Tahsildar Lr.No.B4/2762/65, the patwari was directed in the year 1965 to delete this number from the Khata of both the declarants. Evidence was placed before on that both of these branches are no more in their possession and since 1964 land revenue is not being collected. This being government land it cannot be computed against the holding of these declarants. Accordingly, order the deletion of ½ share out of 57.12 guntas from each of these two branches."

8. The land bearing S.No.13 of Dasarlapally village, kandukur Mandal, R.R. District came to be excluded from the holding of Venkat Reddy and Narsimha Reddy. At this juncture, it is required to be noted that J.Srinivasa Reddy and Krishna Reddy who

are the petitioners in W.P.No.16576 of 2004 are parties to the order dated 15.2.1977 passed by the Land Reforms Tribunal. Another important fact to be noted is that land bearing S.No.13 admeasuring Ac.15.12 guntas came to be excluded on the plea advanced by them that their ancestor relinquished rights over the said land and therefore the land came to be classified as Kharij Khata.

9. Venkat Reddy and Narsimha Reddy who are sons of Kista Reddy stated to have allegedly executed two unregistered sale deeds on 10.4.1974. One in favour of Syed Ahmed Ali, Mohd.Jaweed Siddique and Mohd. Amjad Ali and another in favour of Aziz Mirza and another namely Khaja Hasnuddin. The petitioners (Syed Ahmed Ali, Mohd. Jawed Siddique and Mohd. Amjad Ali) in W.P.No.9700 of 2004 approached the Mandal Revenue Officer under section 5-A of the Act for regularization of alienation covered under unregistered document dated 10.7.1994. The Mandal Revenue Officer entertained the application and issued validation certificate in Form-13-B on 28.12.1993.

10. The petitioner(Aziz Mirza) in W.P.No.12077 of 2004 also approached the Mandal Revenue Officer for regularizaton of alienation covered under unregistered document dated 10.7.1974 in respect of the self same land. The Mandal Revenue Officer issued validation certificate in his favour in Form 13-B on 2.2.2002 vide file No.ROR/13/598/95. The petitioners in W.P.No.9700 of 2004 on coming to know of the order dated 2.2.2002 passed by the Mandal Revenue Officer in favour of Aziz Mirza (petitioner in W.P.No.12077 of 2004) filed an appeal before the Revenue Divisional Officer as provided under section 5-B of the Act, 1971. The appeal came to be allowed by the appellate authority on 18.8.2003 setting aside the order passed by the Mandal Revenue Officer regularizing the alienation in favour of Aziz Mirza. The relevant portion of the order passed by the appellate authority needs to be noted and it is thus:

> " While the matter thus stood ther espondent herein Sri.Aziz Mirda, S/o Dilawar Mirda and another by filing claim petition in Form X on 10.3.95 before the Mandal Revenue Officer, kandakur I sought for regularization of an another Un-Reg.Sale deed dated 10.4.1974 in respect of the same land i.e. Sy.No.13 (57-12) of Dasarlapally village

stated to have been executed by the same Pattadars J.Narsimha Reddy, Venkat Reddy sons of Kista Reddy. The Mandal Revenue Officer, taken up the case in file No.B/598/95 and after issuing notices and after obtaining a report from the VAO of the village regularized the unregistered sale deed in favour of Sri.Aziz Mirda, S/o Dilawar Mirda by issuing 13-B and 13C certificates on 2.2.2002. After purchase of the land under alleged unregistered sale dated 10.4.1974, no where in the pahanies the name of the respondent figures as an occupant of the land. Moreover after validating the unregistered sale deed in favour of the appellant long ago. On 28.12.93 in file No.B/2123/91, the Mandal Revenue Officer, is not supposed to issue proceedings u/s 5-a of the ROR Act for second time in respect of the same land in the year 2002 in favour of the respondent, particularly when the appellants were already issued PPB/title deeds in pursuance of the earlier proceedings in File No.B/2123/91.

In view of the above, the orders of the Mandal Revenue Officer, Kandukur in File No.B/598/95, dated 2.2.2002 are hereby set aside. Accordingly, the appeal is allowed."

11. Assailing the order of the appellate authority, Aziz Mirza (Petitioner in W.P.No.12077 of 2004) filed revision under Section 9 of the Pattadar Pass Book Act, 1971 before the Joint Collector. The Joint Collector, on considering the material on record and on hearing the parties, came to the conclusion that the owners have relinquished their rights in the land in question under Rule 16 of the A.P. (Telengana Area) Land Revenue Rules, 1951 and the said relinquishment has been accepted by the Tahsildar, Ibrahimpatnam and necessary directions have been issued to the Patwari on 23-7-1965 to make the said land as Kharij Khatha and implement the same in the next Jamabandi. It is further observed by the Revisional Authority- Joint Collector that the petitioners sought for exclusion of the land in question from their holding on the ground of their relinquishment of rights over the land and thereupon the Land Reforms Tribunal, Hyderabad South, accepted their contention and excluded the land from their holding. With the above observations, the revisional authority-Joint Collector set aside the orders passed by the Mandal Revenue Officer in favour of both the parties i.e. Petitioners in W.P.Nos. 9700 of 2004 and 12077 of 2004. While disposing of the revision, an observation has been made by the revisional authority that the writ petitioners in W.P.No.9700 of 2004 may approach

the competent authority to get the regularization of their possession, if they so desire. For better appreciation I may refer the relevant portion of the order dated 5-6-2004 passed by the Joint Collector and it is thus: -

> "But, as per the report of the Mandal revenue Officer, Kandukur Mandal, dated 21-05-2004, and the Xerox copy fo the file bearing No. B/2762/1965 and faisal Patti for the year 1966-67 the land in Sy.No. 13, extent 57-12 acres situated Dasarlapally village has been relinquished by the original pattadars U/r. 16 of A.P. (T.A.) Land Revenue Rules, 1951, and the Tahsildar, Ibrahimpatan accepted the same and directed the Patwari on 23-07-1965 to make the said land as Kharij Khata and implement the same in the next Jamabandi. Accordingly, the same was approved in the Faisal Patti for the year, 1966-67 as Aian Kammi. But surprisingly the name of the original pattadars continued surreptitiously by the then Patwari in the subsequent years Pahanies despite approval of the said land as Kharij Khata. More over the relinquishment of rights in respect of the land in question is corroborated as per the Affidavit filed by Sri J. Narsimha Reddy, s/o: J.Kista Reddy in C.C.No.1917/l/75 and Sri J. Ranga Reddy, s/o: J.Narsimha Reddy in C.C.No.1907/l/75 before the Land Reforms Tribunal, Hyderabad South and the same has been reflected in the proceedings of the Land Reforms Tribunal, dated 15-02-1977 in the ceiling declaration filed by Sri Jambula Venkat Reddy & Others which is as below:-
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> "However the counsel for the declarant argued that Sy.No.13 measuring 57-12 acres of Dasarlapally is Kharij Khata land and through Tahsildar Lr. No. B/2762/65, the Patwari was directed in the year, 1965, to delete this number from the Khata of both the declarants. Evidence was placed before me that both of these branches are no more in their possession and since 1964 land revenue is not being collected. This being government land and it cannot be computed against the holding of these declarants. Accordingly, I order the deletion of ½ share out of 57-12 acres from each of these two branches".
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> In view of the above facts it has been established that the land in Sy.No.13, extent 57-12 acres in Dasarlapally Village of erstwhile Ibrahimpatan Taluq was relinquished by the registered holder by submitting unconditional Razinama in writing to the Tahsildar, Ibrahimpatan on 5-6-1965 and the same has been accepted by the Tahsildar, Ibrahimpatan and the Patwari of Dasarlapally village was directed to make the said land as Kharij Khata and accordingly, the same was approved in the Faisal Patti for the year 1966-67. But,

unfortunately and surreptitiously was not carried out in the Pahani for the subsequent year i.e., 1967-68 onwards in pursuance of the Faisal Patti for the year 1966-67. However, due to the mistake of the revenue officials at village level and also Taluq/Mandal level the landing question was not recorded as Kharij Khata and the names of the pattadars continue to appear in the Revenue Records replying upon which the respondents entered into sale deeds and got validated their unregistered sale ded which also was an error by the revenue officials. In any way the land in question which has been made Kharij Khata and has become Government Land cannot be allowed for validation u/s 5-A of the Act. Since the A.P. (T.A.) Record of Rights in Land Regulation 1358-Fasli (Regulation No.I, VIII of 1358-F) and all standing orders and other provisions of law relating to the Record of Rights of land as in force in the State have been repealed by sectin-13 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. In view of the powers vested with me U/s. 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, having called for and examined the record relating to land bearing Sy.No. 13, extent 57-12 acres situated at Dasarlapally village of Kandukur Mandal, prepared and maintained in respect of the said land, I do not satisfy as to the regularity, correctness, legality and propriety of the orders passed by the Mandal Revenue Officer, Kandukur Mandal, dated 28-12-1993, in File No. B/2123/1991 and orders in File No.B/598/1995, dated 02—02-2002 and also the orders of the Revenue Divisional Officer R.R. East Division, dated 18-08-2003 in file NO. A2/862/2003 are hereby quashed. The Mandal Revenue Officer, Kandukur Mandal, is directed to correct the entry in respect of Sy.No.13, extent 57-12 acres of Dasarlapally village as Kharij Khata in the Pattadar column and Government in possession column in the Pahanies for the years 1967-68 onwards. The respondent if so advised may approach the competent authority to get regularization of the Government Land if they desired so. Accordingly, the revision is disposed of".

Hence these, three writ petitions.

12. Two Writ Petitions being W.P.No.9700 of 2004 and 12077 of 2004 are filed by the purchaser and whereas one Writ Petition being W.P.No.16576 of 2004 is filed by the sons of original pattadars.

13. Heard Sri E.Manohar, learned senior counsel appearing for the petitioners in W.P.No.9700 of 2004 and Sri Vilas Afzul Purkar, learned senior counsel appearing for the petitioner in W.P.No.12077 of 2004 and Sri V.Venkataramana, learned senior counsel appearing for the petitioners in W.P.No. 16576 of 2004 and learned Government Pleader for Revenue appearing for the respondents.

14. Learned counsel appearing for the Petitioners in 16576 of 2004 submits that regularizations and alienations in favour of the alleged purchasers without putting on notice to the petitioners is against the principles of natural justice. He would further contend that observations made by the Joint Collector that original pattadars relinquished their rights over the land without the petitioners, who are their legal representatives of the original pattadar, putting on notice opposed to the principles of natural justice. He would also contend that whenever there is violation of the principles of natural justice, domestic remedy under statute need not be invoked and the writ Court can do substantial justice to the parties without relegating them to avail domestic remedies under the Act. In support of his submissions reliance has been placed on the decision of this Court in ***Konkana Ravinder Goud Vs. Bhavanarishi Co-operative House Building Society, Hyderabad,*** wherein it has been held that Rule 22 required the M.R.O. to issue notice to the alienor or transferor in Form XI – Specifying therein the date on which and the time on which he proposes to enquire into the application.

15. Learned senior counsel appearing for the petitioners in W.P.No.9700 of 2004 submits that the alienations in favour of the petitioners have been regularized on 28-12-1993 and therefore entertaining of the application of Aziz Mirza by the Mandal Revenue Officer for Regularization of the alienation in respect of self same land is illegal. He would further contend that the petitioners have made application to the Government as observed by the revisional authority, for regularization of their possession and therefore necessary direction is required to be given to the Government for disposal of the said application.

16. Learned senior counsel appearing for the petitioner in W.P.No. 12077 of 2004

contends that the revisional authority ought to have made similar observation as was made in the case of Petitioners in W.P.No.9700 of 2004 in favour of Aziz Mirza also.

17. The Joint Collector in exercise of the revisional powers under section 9 of the Pattadar Pass Book Act, 1971 set aside the order passed by the Mandal Revenue Officer, dated 28-12-1993 in File NO. R.O.R.No. B-2123 of 1991 and order dated 2-2-2002 in File NO. R.O.R.NO.8/598/98/95. The petitioners in W.P.No. 9700 of 2003 and W.P.No.12077 of 2004 based their claims on the unregistered sale deed dated 10-4-1974 said to have been executed by Venkat Reddy and Narsimha Reddy who are the sons of Kista Reddy. It has come on record that the petitioners in W.P.No.16576 of 2004 are tracing title to the property through Venkat Reddy and Narsimha Reddy. It has come on record that Venkat Reddy and Narsimha Reddy filed declaration before the Land Ceiling Tribunal. Indeed the petitioners in W.P.No.16576 of 2004 being members of the joint family also filed separate declarations. They contended before the Land Ceiling Tribunal that the land in question was relinquished in the year 1962 itself and therefore, sought for exclusion of the land from their holding. The contentions advanced by the petitioners before the Land Reforms Tribunal and the finding thereon has been detailed in the earlier paras of the order. The land in question came to be excluded from the holding of the petitioners in W.P.No.16576 of 2004 as sought for by them. Having sought for exclusion of the land in question from their holdings, they cannot be permitted to contend that notice is required to be served on them and non-service of notice amounts to violation of principles of natural justice. Mere violation of principles of natural justice does not vitiate the impugned action, unless prejudice is shown to have been caused to the aggrieved parties by the said action. The petitioners having got the land excluded from their holdings cannot be permitted to contend that they are still owners of the land in question. Therefore, W.P.No.16576 of 2004 is devoid of merits and the same is liable to be dismissed.

18. With regard to W.P.No. 9700 of 2004 and W.P.No.12077 of 2004 the revisional authority having verified the records recorded a finding that the land in question is Kharij Khatha and in which case, the proceedings issued by the Mandal Revenue Officer validating the alienations in favour of the petitioners are unsustainable and

they are perse illegal.

19. The revisional authority in the facts and circumstances of the case is justified in setting aside the order passed by the Mandal Revenue Officer on 28-12-1993 and 2-2-2002. I do not see any flaw in the order passed by the Joint Collector.

20. Accordingly W.P.Nos. 9700, 12077 and 16576 of 2004 are devoid of merits and are liable to be dismissed.

21. In the result, all the three writ petitions are dismissed. No order as to costs.

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Justice B.Seshasayana Reddy

25th April, 2006

TNB/KM

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NOS.9700, 12077 AND 16576 OF 2004

COMMON ORDER:

Dated: